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8
9 **BEFORE THE**
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No.: OT2009-15

12 **ANNE MARIE HICKEY**
13 **5 Embarcadero West Apartment 224**
14 **Oakland, California 94607**

A C C U S A T I O N

15 **Occupational Therapist License No. OT**
16 **7080**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Heather Martin (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Occupational Therapy, Department of Consumer
22 Affairs.

23 2. On or about August 26, 2003, the California Board of Occupational Therapy issued
24 Occupational Therapist License Number OT 7080 to Anne Marie Hickey (Respondent). The
25 Occupational Therapist License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on February 28, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the California Board of Occupational Therapy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2570.26 provides in pertinent part, that the Board "may, after hearing, deny, suspend, revoke or place on probation a license, certificate, inactive license, inactive certificate, or limited permit."

5. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY AUTHORITY

6. Section 480(a)(1) of the Code provides, in pertinent part, that a board may deny a license on the grounds that the licensee was convicted of a crime.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 2570.28 states:

"The board may deny or discipline a licensee for any of the following:

...

"(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any regulation adopted pursuant to this chapter.

...

"(o) Committing any act that would be grounds for denial of a license under Section 480."

9. Section 2570.29 states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the

1 following:

2 ...

3 "(b) Use to an extent or in a manner dangerous or injurious to himself or herself, to any
4 other person, or to the public, or that impairs his or her ability to conduct with safety to the public
5 the practice authorized by his or her license, of any of the following:

6 ...

7 "(3) Alcoholic beverages.

8 "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-
9 administration of any of the substances described in subdivisions (a) and (b) of this section, or the
10 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
11 of this section, in which event the record of the conviction is conclusive evidence thereof."

12 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licensee found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 FIRST CAUSE FOR DISCIPLINE

17 (Conviction)

18 11. Respondent has subjected her license to disciplinary action under sections 490 and
19 2570.28(e) of the Code in that she was convicted of a crime substantially related to the
20 qualifications, functions or duties of an occupational therapist in that on or about September 18,
21 2009, in the Superior Court of California, County of Alameda, Case Number 552890, entitled *The*
22 *People of the State of California vs. Anne Marie Hickey*, Respondent was convicted by the court
23 on her plea of nolo contendere of violating Vehicle Code Section 23152(b) (driving while having
24 a 0.08% or higher blood alcohol level), a misdemeanor. The imposition of sentencing was
25 suspended, and Respondent was placed on a three-year conditional probation upon terms, which
26 included, but were not limited to, the following: obeying all laws; reporting any change of address
27 to the Court within 10 days; paying fine of \$1,802.00; serving two days in jail, with credit for one
28 day; participating in an Alcoholics Anonymous program for 90 days; and attending and

1 completing traffic and Driving Under the Influence schools. The factual circumstances
2 surrounding the conviction are as follows:

3 a. On or about July 26, 2009, Oakland Police Department (OPD) Officer Turner,
4 conducted a vehicle stop on a black VW Passat, license number 4VZN857, because the car was
5 weaving in and out of a lane on the freeway. At first, the vehicle's driver, Respondent Anne
6 Marie Hickey (Respondent), did not respond to the patrol car's lights and siren. Finally, the
7 driver pulled over to the left side shoulder of the freeway.

8 b. When the officer approached the vehicle, he noticed that Respondent's hands were
9 shaking and he smelled an alcoholic odor from inside the vehicle. The officer called for
10 Californian Highway Patrol (CHP) support to conduct field sobriety tests. When the CHP officer
11 arrived, he assisted the OPD officer in moving Respondent's car from the freeway to a city street.
12 At this point, the CHP officer took over the investigation.

13 c. Upon contacting Respondent, the CHP officer noticed the strong odor of alcohol
14 emanating from Respondent's body and breath. In addition, the CHP officer noticed that
15 Respondent's eyes were bloodshot and glossy, that she was lethargic, and that her speech was
16 slurred. He asked Respondent if she consumed any alcohol before driving and she said no. He
17 asked Respondent a series of pre-Field Sobriety Test (FST) questions which she answered. He
18 explained and demonstrated several FSTs, and she confirmed that she understood them. The
19 CHP officer gave her three FSTs. During the Horizontal Gaze Nystagmus test (eye-tracking test),
20 Respondent did not fair well and swayed heavily throughout the test. During the Walk and Turn
21 test, among other things, Respondent lost her balance and removed her left foot off of the line by
22 more than six inches to the left of the line to stop from falling, stepped off of the line during every
23 step, and missed heel-to-toe by two to three inches on all of the steps. And, during the
24 Preliminary Alcohol Screening (PAS) Test, a device that measures alcohol levels by blowing into
25 it, Respondent was continuously instructed to blow harder into the PAS device. After several
26 attempts, two of her breath samples were manually trapped.

27 d. Based on the OPD officer's observations while Respondent was driving,
28 Respondent's objective signs and symptoms of alcohol intoxication, and her poor performance

1 during the FSTs, the CHP officer determined that Respondent was driving while under the
2 influence of alcohol and placed her under arrest. Respondent consented to submit to a blood test.
3 Her blood alcohol content (BAC) was .30% and .28%. She was booked for violating Vehicle
4 Code sections 23152(a) (misdemeanor driving under the influence) and 23152(b) (misdemeanor
5 driving under the influence with BAC of 0.08% or greater).

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Use of Alcoholic Beverage in a Manner Dangerous or Injurious to Self or Public)**

8 12. The allegations of paragraph 11 are hereby realleged and incorporated by reference as
9 if fully set forth.

10 13. Respondent has subjected her license to disciplinary action under section
11 2570.29(b)(3) of the Code on the grounds of unprofessional conduct, in that on or about
12 September 18, 2009, Respondent was convicted of violating Vehicle Code section 23152(b), a
13 crime involving the use of an alcoholic beverages in a manner dangerous and injurious to herself
14 and the public, as set forth above in paragraph 11.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Conviction of a Crime Involving Alcohol)**

17 14. The allegations of paragraph 11 are hereby realleged and incorporated by reference as
18 if fully set forth.

19 15. Respondent has subjected her license to disciplinary action under section 2570.29(c)
20 of the Code on the grounds of unprofessional conduct, as defined by section 2570.29(b) in that on
21 or about September 18, 2009, Respondent was convicted of violating Vehicle Code Section
22 23152(b), a crime involving the consumption of alcoholic beverages, as set forth above in
23 paragraph 11.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct)**

26 16. The allegations of paragraphs 11-15 are hereby realleged and incorporated by
27 reference as if fully set forth.

17. Respondent has subjected her license to disciplinary action under section 2570.28(c) of the Code and Title 16, California Code of Regulations, section 4170(e), on the grounds of unprofessional conduct in that she violated several provisions of the Occupational Therapy Practice Act, specifically sections 2570.28(o), 2570.29(b)(3) and 2570.29(c), as set forth above in paragraphs 11-15.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

18. The allegations of paragraph 11 are hereby realleged and incorporated by reference as if fully set forth.

19. Respondent has subjected her license to disciplinary action under section 2570.28(o) of the Code on the grounds of unprofessional conduct, as defined by section 480, in that on or about September 18, 2009, Respondent was convicted of violating Vehicle Code section 23152(b) (driving while having a 0.08% or higher blood alcohol level), a misdemeanor, as set forth above in paragraph 11-15.

PRAYER

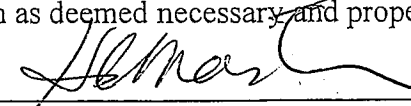
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Occupational Therapy issue a decision:

1. Revoking or suspending Occupational Therapist License Number OT 7080, issued to Anne Marie Hickey Anne Marie Hickey.

2. Ordering Anne Marie Hickey to pay the California Board of Occupational Therapy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: February 9, 2010


HEATHER MARTIN
Executive Officer
California Board of Occupational Therapy
Department of Consumer Affairs
State of California
Complainant

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